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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/686,919	10/16/2003	Alan T. Pullins	380-150	7504
1009	7590	09/07/2006	EXAMINER	
KING & SCHICKLI, PLLC 247 NORTH BROADWAY LEXINGTON, KY 40507			TILL, TERRENCE R	
			ART UNIT	PAPER NUMBER
			1744	

DATE MAILED: 09/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/686,919

Applicant(s)

PULLINS, ALAN T.

Examiner

Terrence R. Till

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 and 20-22 is/are rejected.
- 7) ☒ Claim(s) 19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 1/04, 3/04.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Double Patenting*

1. Claims 1 and 2 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-9 of copending Application No.

10/686,920. Although the conflicting claims are not identical, they are not patentably distinct from each other because the combination of claims 1-9 of the '920 application disclose a vacuum cleaner, comprising: a housing; a nozzle inlet; a suction generator carried on said housing; and a dirt vessel carried on said housing, said dirt vessel including a sidewall, a bottom wall, an air inlet and an air outlet; a filter shield aligned with said air inlet to deflect an airstream entering said dirt vessel through said air inlet; and a filter element (recited in claim 9). The vacuum cleaner of claim 1, wherein said air inlet is in said bottom wall of said dirt vessel. Therefore, the combination of claims 1-9 fully encompass the claimed subject matter of claims 1 and 2.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

2. Claim 22 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 10/686,920 in view of Duffie (1,230,827). Claim 1 of the '920 application discloses a vacuum cleaner, comprising: a housing; a nozzle inlet; a dirt vessel carried on said housing, said dirt vessel including a sidewall, a bottom wall, an air inlet and an air outlet; and a suction generator carried on said housing below said dirt vessel, but does not disclose an air inlet in said bottom wall. The patent to Duffie discloses a vacuum cleaner having a housing 1a,1b, a nozzle inlet (near 5); a dirt vessel 10

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carried on said housing, said dirt vessel including a sidewall, a bottom wall 15, an air inlet in said bottom wall and an air outlet; and a suction generator (“fan/motor”) carried on said housing below said dirt vessel. Therefore, It would have been obvious to a person skilled in the art at the time the invention was made to provide an air inlet in said bottom wall to claim 1 of the ‘920 application in view of the teaching of Duffie as the location of such an inlet is old and well known.

This is a provisional obviousness-type double patenting rejection.

3. Claim 22 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-3 of copending Application No. 10/929,642 in view of Duffie. Claims 1-3 of the ‘642 application discloses a vacuum cleaner, comprising: a housing; a nozzle inlet; a dirt vessel carried on said housing, said dirt vessel including a sidewall, a bottom wall, an air inlet and an air outlet; and a suction generator carried on said housing below said dirt vessel, but does not disclose an air inlet in said bottom wall. The patent to Duffie discloses a vacuum cleaner having a housing 1a,1b, a nozzle inlet (near 5); a dirt vessel 10 carried on said housing, said dirt vessel including a sidewall, a bottom wall 15, an air inlet in said bottom wall and an air outlet; and a suction generator (“fan/motor”) carried on said housing below said dirt vessel. Therefore, It would have been obvious to a person skilled in the art at the time the invention was made to provide an air inlet in said bottom wall to claims 1-3 of the ‘642 application in view of the teaching of Duffie as the location of such an inlet is old and well known.

This is a provisional obviousness-type double patenting rejection.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-5, 7-9 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Grey(US-6,243,912).

6. The patent to Grey discloses (see figure 2) a vacuum cleaner, comprising: a housing 10; a nozzle inlet 50; a suction generator 20 carried on said housing; and a dirt vessel 40 carried on said housing, said dirt vessel including a sidewall, a bottom wall, an air inlet and an air outlet; a filter shield 73 aligned with said air inlet to deflect an airstream entering said dirt vessel through said air inlet; and a filter element, said air inlet is in said bottom wall of said dirt vessel, an air inlet conduit 46 is provided between said air inlet and said filter shield a gap is provided between an open end of said air inlet conduit and said filter shield, said filter shield is carried by said filter element 71, said air outlet is formed by an open top of said filter vessel said filter element covers said air outlet, and said dirt vessel includes a dirt collection chamber.

7. Claim 22 is rejected under 35 U.S.C. 102(b) as being anticipated by Duffie.

8. The patent to Duffie discloses a vacuum cleaner having a housing 1a,1b, a nozzle inlet (near 5); a dirt vessel 10 carried on said housing, said dirt vessel including a sidewall, a bottom wall 15, an air inlet in said bottom wall and an air outlet; and a suction generator (“fan/motor”) carried on said housing below said dirt vessel.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Grey (US-6,243,912) in view of Bilde (US-1,847,233).

12. The patent to Grey discloses the claimed invention except that Grey does not employ a filter element that includes two screens sandwiching a filter material. The patent to Bilde shows that a filter element includes two screens 65,66 sandwiching a filter material 71 is an equivalent structure known in the art. Therefore, because these two kinds of filters were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute Grey's filter element for filter element that includes two screens sandwiching a filter material.

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13. Claims 10-18 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grey (US-6,243,912).

14. Grey discloses all the recited subject matter, including said air inlet conduit 46 is received concentrically within said sidewall of said dirt vessel 40, at least a portion of said dirt collection chamber is annular in shape, an exhaust manifold (above filter support 72) that includes a manifold inlet in fluid communication with said air outlet of said dirt vessel and a discharge outlet in communication with said suction generator 20, said filter element is carried by said exhaust manifold, said exhaust manifold is carried by said housing, and wherein said filter element is carried by said dirt vessel, said filter element and said exhaust manifold are carried on said dirt vessel, said housing includes a nozzle section including said nozzle inlet and a canister section wherein said nozzle section and said canister section are pivotally connected together (see Column 4, lines 5-10). Grey does not disclose said dirt collection chamber is substantially cylindrical in shape. It would have been an obvious matter of engineering choice to modify the shape of the dirt vessel of Grey to be substantially cylindrical, since such a modification would have involved a mere change in the shape or form of a component. A change in shape or form is generally recognized as being within the level of ordinary skill in the art. In re Dailey, 149 USPQ 47 (CCPA 1976).

***Allowable Subject Matter***

15. Claim 19 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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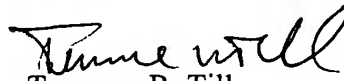
*Conclusion*

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Breton, Cockburn et al., Vose, Cyphert and Japanese patent to Ohira et al. show the current state of the art in vacuum cleaners with deflectors.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Terrence R. Till whose telephone number is (571) 272-1280. The examiner can normally be reached on Mon. through Thurs. and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys P. Corcoran can be reached on (571) 272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Terrence R. Till  
Primary Examiner  
Art Unit 1744

trt